

JOHN C. CRUDEN
Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

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OCT 27 1993	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

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JANET NAPOLITANO
United States Attorney
District of Arizona

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230 North First Avenue
Phoenix, Arizona 85025
(602) 514-7500

Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT L. STANFORD; STANFORD FARMS;
GREGORY D. STANFORD; and STEPHEN H.
STANFORD,

Defendants.

No. CIV 90-1707 PHX SMM

CONSENT DECREE

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10/27

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the Environmental Protection Agency ("EPA"), has filed a Complaint and First Amended Complaint against Defendants Robert L. Stanford, Gregory D. Stanford, Stephen H. Stanford, and Stanford Farms (collectively, the "Settling Defendants"), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607(a).

B. The United States in its Complaint and First Amended Complaint seeks reimbursement of response costs incurred by EPA and the Department of Justice for response actions in connection with the release and threatened release of hazardous substances at the Stanford Pesticide Sites ## 1 and 2, as defined in the United States' Complaint and First Amended Complaint filed in this action.

C. The United States and the Settling Defendants agree that settlement of the dispute between them without costly and protracted litigation is in the public interest.

D. The Settling Defendants have asserted a counterclaim for contribution against the United States pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613.

E. The Parties, by and through their representatives, have agreed to the execution of this Consent Decree in settlement of all claims alleged by the United States in the Complaint and

1 First Amended Complaint and by the Settling Defendants in the
2 counterclaim.

3 F. The parties entering into this Consent Decree deny any
4 and all liability arising out of the transactions or occurrences
5 alleged in the Complaint, First Amended Complaint or
6 counterclaim.

7 NOW, THEREFORE, without trial, adjudication or
8 admission of any issue of law, fact, or responsibility by the
9 Parties,

10 IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

11 II. JURISDICTION

12 The parties agree that this Court has jurisdiction over
13 the subject matter of this action and has personal jurisdiction
14 over the Settling Defendants, pursuant to 42 U.S.C. § 9613(b) and
15 28 U.S.C. §§ 1331 and 1345. Solely for the purposes of this
16 Consent Decree and the underlying Complaint and First Amended
17 Complaint, the Settling Defendants waive any objection they may
18 have to venue in this Court. The Parties agree not to contest
19 the jurisdiction of the Court to enter this Consent Decree or to
20 hear any subsequent action brought by the United States to
21 enforce it.

22 III. PARTIES BOUND

23 This Consent Decree shall apply to and be binding upon
24 the United States acting on behalf of EPA and shall apply to and
25 be binding upon the Settling Defendants, together with their
26 personal representatives, successors, and assigns.

IV. DEFINITIONS

Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

B. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

C. "Notice" shall mean mailed by certified mail, return receipt requested, and shall be deemed given on the date mailed in this fashion.

D. "Parties" shall mean the United States of America and the Settling Defendants.

E. "Plaintiff" shall mean the United States of America.

F. "Response Costs" shall mean all costs including, but not limited to, direct and indirect costs, including attorney time, that EPA and the United States Department of Justice on behalf of EPA have incurred for response actions at the Sites prior to the date of entry of this Consent Decree, and accrued

1 interest on such costs through the date of entry of this Consent
2 Decree.

3 G. "Settling Defendants" shall mean Robert L. Stanford,
4 Gregory D. Stanford, Stephen H. Stanford, and Stanford Farms.

5 H. "Sites" shall mean the subject sites as described and
6 identified in the Complaint and First Amended Complaint.

7 I. "United States" shall mean the United States of America
8 and its departments, agencies, and instrumentalities including,
9 but not limited to, the United States Environmental Protection
10 Agency and the United States Department of the Interior.

11 V. REIMBURSEMENT FOR RESPONSE COSTS

12 The Settling Defendants agree to make payment of
13 Response Costs to the United States in accordance with the
14 following terms:

15 A. Defendants will pay to the United States the sum of
16 \$73,222 within 45 calendar days from the date of entry of this
17 Consent Decree.

18 B. Defendants will pay to EPA the additional sum of
19 \$65,000 to be disbursed from the escrow account numbered 93-4887,
20 opened on April 9, 1993, at Arizona Escrow and Financial, in
21 accordance with the escrow instructions attached to this Consent
22 Decree as Addendum A, within 15 calendar days from the date of
23 entry of this Consent Decree.

24 C. The above-referenced payments shall be by Electronic
25 Funds Transfer ("EFT" or wire transfer) to the U.S. Department of
26 Justice lockbox bank, referencing CERCLA Site/Spill ID Numbers

1 9T-E3 and 9T-E4 and the U.S.A.O. file number 9003822. Payment
2 shall be made in accordance with instructions provided by the
3 United States to the Settling Defendants upon execution of the
4 Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox
5 bank after 11:00 A.M. (Eastern Time) will be credited on the next
6 business day.

7 D. Confirmation of such payment shall reference the
8 "Stanford Pesticide Sites 1 and 2, Yuma County, Arizona, ## E-3
9 and E-4," and shall contain the following identifying
10 information: the name of this case, United States v. Robert L.
11 Stanford, et al., No. CIV 90-1707 PHX SMM, and the name and
12 complete address of the paying party. When payment is made,
13 unless the individuals below or their successors give written
14 notice of a change in address or procedure, confirmation that
15 payment has been made shall be provided to:

16 Gavin McCabe, Esq.
17 Office of Regional Counsel (RC-3-4)
18 U.S. Environmental Protection Agency, Region 9
19 75 Hawthorne Street
20 San Francisco, California 94105

21 Mr. David Wood
22 Office of the Comptroller (P-4-2)
23 U.S. Environmental Protection Agency, Region 9
24 75 Hawthorne Street
25 San Francisco, California 94105

26 and

David B. Glazer, Esq.
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105

Re: DOJ # 90-11-3-722.

VI. Failure to Make Timely Payments

1 A. Stipulated Penalty. In the event that the Settling
2 Defendants should fail to make payment of any sum due and owing
3 in accordance with the terms of this Consent Decree, then without
4 further order of the Court, this Consent Decree shall be deemed
5 an enforceable judgment, for purposes of post-judgment collection
6 in accordance with Federal Rule of Civil Procedure 69 and other
7 applicable federal authority, in favor of the United States for
8 all Response Costs incurred to date, including prejudgment
9 interest thereon.

10 B. Interest. The rate of interest shall be the rate
11 specified for interest on investments of the Hazardous Substance
12 Superfund established under subchapter A of chapter 98 of Title
13 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a),
14 compounded (at EPA's option) on a daily, monthly or annual basis.
15 The parties agree that the Settling Defendants shall be liable to
16 the United States for interest on the amount owed from the date
17 payment is due under this Consent Decree until the entire sum is
18 collected. The Settling Defendants shall be liable to the United
19 States for any and all costs and attorneys fees incurred by the
20 United States in collecting any and all sums owed and overdue
21 under the terms of this Consent Decree.

22 VII. COVENANTS NOT TO SUE BY PLAINTIFF

23 A. Covenant not to Sue. Except as specifically provided
24 herein, the United States covenants not to sue the Settling
25 Defendants under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
26

in any civil or administrative proceeding to recover Response
Costs as defined in this Consent Decree. This covenant not to
sue shall take effect upon the receipt by the United States of
all payments as required as set forth in this Consent Decree.
This covenant not to sue extends only to the Settling Defendants
and does not extend to any other person.

B. Reservation of Rights.

a. General. The covenant not to sue set forth in
Paragraph A of this Section does not pertain to any matters other
than those expressly specified therein. Except as specifically
provided in Paragraph A of this Section, the United States
reserves its response and enforcement authority to initiate
appropriate action, either judicial or administrative, under
Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606,
9607, or any other provision of law, against the Settling
Defendants or any other person or entity not a party to this
Consent Decree.

b. Specific Reservations. The covenant not to sue
provided in Paragraph A of this Section does not apply, inter
alia, to the following:

(1) Claims based upon any failure by the Settling
Defendants to meet any requirement of this Consent Decree,
including any failure to fulfill the certification requirement of
Section XIII of this Consent Decree.

(2) Claims for costs incurred or to be incurred by the
United States in connection with the Sites that are not within

the definition of Response Costs set forth in this Consent Decree and that are not barred by any applicable statute of limitations;

(3) Claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

(4) Liability for damages for injury to, destruction of, or loss of natural resources, or for the costs incurred by natural resource trustees in connection therewith; and,

(5) Criminal liability.

VIII. COVENANTS BY THE SETTLING DEFENDANTS

A. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, or against any department, agency or instrumentality of the United States or any officers or representatives thereof, with respect to the Sites or this Consent Decree including, but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund (established by 26 U.S.C. § 9507) under Sections 106(b)(2), 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, and 9613, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA related to the Sites; or any claims arising out of response activities at the Sites.

B. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

1 C. Pursuant to Fed. R. Civ. P. 41(a), (c), the Settling
2 Defendants hereby dismiss with prejudice all claims brought
3 against the United States in this action.

4 IX. CONTRIBUTION PROTECTION

5 With regard to claims for contribution against the
6 Settling Defendants or the United States for matters addressed in
7 this Consent Decree, the Parties hereto agree that the Settling
8 Defendants and the United States are entitled to such protection
9 from contribution actions or claims as is provided by Section
10 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

11 X. EFFECTIVE DATE

12 The effective date of this Decree shall be the date
13 upon which it is entered by the Court.

14 XI. RETENTION OF JURISDICTION

15 The Court shall retain jurisdiction of this matter to
16 enforce the terms and conditions of this Consent Decree.

17 XII. NOTICES AND SUBMISSIONS

18 Whenever, under the terms of this Consent Decree,
19 notice or demand is required to be given or a document is
20 required to be sent by one party to another, it shall be directed
21 by certified mail, return receipt requested, to the individuals
22 at the address specified below, unless those individuals or their
23 successors give notice in writing of a change to the other
24 Parties. All notices and submissions shall be considered
25 effective upon the date mailed, unless otherwise provided.
26 Written notice as specified herein shall constitute complete

1 satisfaction of any written notice requirement of this Consent
2 Decree with respect to the United States and the Settling
3 Defendants, respectively.

4 As to the United States:

5 John C. Cruden
6 Chief
7 Environmental Enforcement Section
8 Environment and Natural Resources Division
9 United States Department of Justice
10 P.O. Box 7611 Ben Franklin Station
11 Washington, D.C. 20044-7611

12 Re: Case No. 90-11-3-722

13 As to the Defendants:

14 Lucas J. Narducci, Esq.
15 O'Connor, Cavanagh, Anderson, Westover,
16 Killingsworth, and Beshears
17 One East Camelback Road, Suite 1100
18 Phoenix, Arizona 85012-1656

19 XIII. CERTIFICATION OF FINANCIAL INFORMATION


20 A. As to the financial information submitted and disclosed
21 to the United States by each individual Settling Defendant prior
22 to the commencement of this litigation and throughout the course
23 of the litigation, each individual Settling Defendant certifies
24 that the financial information provided by that specific Settling
25 Defendant was true, correct, and accurate to the best of his
26 knowledge, as of the date it was provided. Settling Defendants
further certify that, to the best of their knowledge, as of the
date of this Consent Decree, there has not been any substantial
or material change to their individual financial conditions that
would affect the truthfulness, accuracy, or correctness of the
previously submitted information.

1 B. The Settling Defendants' entry into this Consent
2 Decree, as evidenced by their signatures below, constitutes
3 certification by each individual Settling Defendant, in
4 accordance with Paragraph A of this Section, of the financial
5 information provided by that Settling Defendant.

6 We hereby agree to the terms and to entry of this
7 Consent Decree:


8 For the United States:

9 Dated: 10-21-93

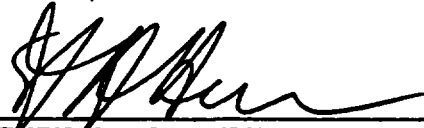

JOHN C. CRUDEN
Chief, Environmental Enforcement
Section
Environment & Natural Resources
Division
United States Department of Justice

JANET NAPOLITANO
United States Attorney
District of Arizona

16 Dated: 10-26-93


JAMES P. LOSS
Assistant United States Attorney
District of Arizona
4000 U.S. Courthouse
230 North First Avenue
Phoenix, Arizona 85025
(602) 514-7500

22 Dated: 10/20/93


STEVEN A. HERMAN
Assistant Administrator for
Enforcement
United States Environmental
Protection Agency
Washington, D.C. 20460

1
2 RICHARD J. GUIMOND
3 Acting Assistant Administrator for
4 Solid Waste and Emergency
5 Response
6 United States Environmental
7 Protection Agency
8 Washington, D.C. 20460

9
10 Dated: 8.19.93

John C. Wise
JOHN C. WISE
Acting Regional Administrator
EPA Region IX
75 Hawthorne Street
San Francisco, California 94105

11 Dated: 10-25-93

David B. Glazer
DAVID B. GLAZER
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105
(415) 744-6477

12
13
14
15
16
17 Dated: 10-25-93

Russell Young
RUSSELL YOUNG
Environmental Defense Section
Environment & Natural Resources
Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-1542

1 For the Defendants:

Approved AS to Form Only:

2
3 Dated:

6-24-93



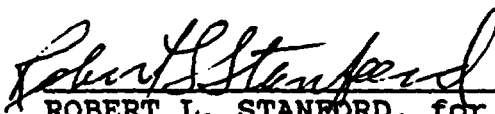
LUCAS J. NARDUCCI

O'Connor, Cavanagh, Anderson,
Westover, Killingsworth &
Beshears

One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656
(602) 263-2554

7
8 Dated:


June 16, 1993



ROBERT L. STANFORD, for himself and
for Stanford Farms, a partnership

9
10
11 Dated:

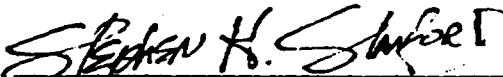
6-22-93



GREGORY D. STANFORD

12
13 Dated:

6-16-1993



STEPHEN H. STANFORD

14
15
16 Dated:

June 16, 1993



ROBERT L. STANFORD, for
Stanford Farms, a Partnership

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21 IT IS SO ORDERED:

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23 Dated:

10-27-93



STEPHEN M. MCNAMEE

United States District Judge

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ADDENDUM A

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ESCROW INSTRUCTIONS

ESCROW # 93-4887

This instruction is by and between Robert Stanford, Gregory Stanford and Stephen Stanford, hereinafter known as "STANFORD" and ARIZONA ESCROW & FINANCIAL CORPORATION, hereinafter known as "ESCROW AGENT"

RECITALS:

The parties above wish to employ ESCROW AGENT for the purpose of receiving and disbursing funds and documents pursuant to the following:

A) Stanford has deposited the sum of \$65,000.00 in this escrow.

B) Stanford directs that after a Consent Decree, whose terms have been mutually agreed upon by the United States and Stanford in matter CIV 90-1707 PHX SMM has been entered by the Court, and presentation of an Order from the Court reflecting such entry has been given to Stanford, that the amount of \$65,000.00 deposited in escrow Account NO. 93-4887, should be disbursed to the United States upon demand.

In the event that the United States and defendants fail to mutually agree upon the terms of the Consent Decree by May 28, 1993, Stanford may terminate this escrow and demand disbursement of the escrows funds at defendants' direction.

In addition to the disbursement of said funds, the undersigned hereby:

A) Agree to indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions or any court action arising therefrom and will pay same on demand.

B) Agree that unless otherwise herein expressly provided, the Escrow Agent shall not be held liable for any action taken or omitted under these instructions, so long as it shall have acted in good faith and without negligence. The Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity or sufficiency of any documents or instruments submitted to it in connection with its duties hereunder. The Escrow Agent shall be entitled to deem the signatories of any document or instrument submitted to it hereunder as being authorized to sign such documents or instruments on behalf of the party submitting such documents or instruments, and shall be entitled to rely upon the genuineness of signatures or such signatories without inquiry and without requiring substantiating evidence.

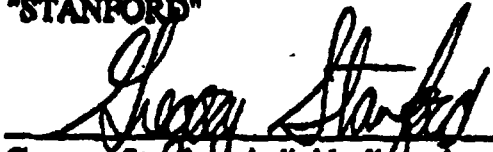
D) Agree to Pay Escrow Agents fees as follows:

\$250.00	Annual Holding Fee
35.00	Interest account fee (optional)
15.00	Disbursement fee (each check issued after one check)

Other fees that may be incurred as a result of other requirements of the escrow.
All fees are to be paid in advance, except disbursement fees.

Executed this day of , 1993 by the undersigned.

"STANFORD"

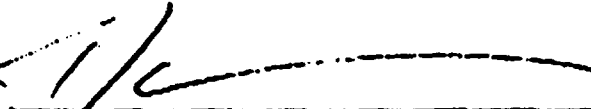


Gregory Stanford, individually and as authorized agent
for Robert Stanford, and Stephen Stanford

c/o Mr. Lucas J. Narducci
O'Connor Cavanagh
One East Camelback Rd., Suite 1100
Phoenix, Arizona 85012-1656
263-2400

"ESCROW AGENT"

ARIZONA ESCROW & FINANCIAL CORPORATION



D. E. Graham, President
3700 N. 24th St., Suite 130
Phoenix, Arizona 85016
956-2629